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# In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1335

NICK N. EGLESON,
APPELLANT,

*v.*

COMMONWEALTH OF MASSACHUSETTS,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

## MOTION TO DISMISS

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## MOTION TO DISMISS

Appellees, pursuant to Rule 16(1) (b) of the Rules of this Court, move to dismiss the appeal on the ground that the question presented is so unsubstantial as not to warrant further argument.

### Opinion Below

The opinion of the Supreme Judicial Court (Jur. St. App. A) is reported at Massachusetts Advance Sheets (1969) pp. 175-179.

## Jurisdiction

The judgment of the Supreme Judicial Court was entered on January 30, 1969. The jurisdictional statement was filed on April 30, 1969. Appellant invokes the jurisdiction of this Court under 28 U.S.C. 1257(2).

## Question Presented

Whether petitioner's conviction for trespassing violated his right of free speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

## Statement

After a non-jury trial, appellant was convicted in the Superior Court of Suffolk County of trespassing in violation of Mass. Gen. Laws (Ter. Ed.) Ch. 266 § 160.[1] He was fined $20. The Supreme Judicial Court affirmed the conviction (Jur. St. App. A).

1. The Commonwealth's evidence is not challenged and is set forth in complete detail in the opinion of the court below. It showed that at approximately 6:15 a.m. on April 2, 1968, one John Slowe, the custodian in charge of a building owned by the City of Boston, unlocked the doors and began his maintenance activities. That building consists of four brick stories, and contains several public facilities including an office of Selective Service System Local Board No. 151. During the next forty-five minutes, two women in charge of the local board office, and about twenty pre-inductees, entered the building. At approximately 6:20 a.m., appellant, an instructor at Massachusetts Institute of

[1] That statute provides in pertinent part: "Whoever, without right, enters or remains in or upon the dwelling house, buildings, boats or improved or enclosed land, wharf or pier of another, after having been forbidden so to do by the person who has lawful control of said premises, either directly or by notice posted thereon, shall be punished by a fine of not more than twenty dollars."

Technology who worked with the "Boston Draft Resistance Group", accompanied by three girls, entered the building. Slowe asked appellant whether he had business in the building, and appellant told him that he wished to speak to the pre-inductees with respect to their rights in relation to the draft. Slowe told appellant that only those having business with the draft board, and cleaning personnel, were normally permitted to enter the building at that hour, and that he (appellant) was interfering with his cleaning operations. At Slowe's request, appellant retreated to the entrance patio outside the first set of doors.

Approximately fifteen minutes later, appellant reentered the building with a pre-inductee. Slowe telephoned police officers who arrived at about 6:45 a.m. They found appellant addressing approximately twenty pre-inductees standing on the fourth floor of the building, and on the staircase between the third and fourth floors. The police officers told appellant that he would not be arrested if he left the building. Appellant refused to leave the building, and was placed under arrest.

2. Appellant testified, *inter alia*, that he did not force conversation upon anyone; that he did not counsel anyone to do anything that would be illegal; and that attempted conversation with the pre-inductees outside of the building would have been, in his opinion, unfruitful.

## Argument

In the circumstances, there is no occasion for further review by this Court. Appellant was not convicted of exercising rights of free speech guaranteed by the First and Fourteenth Amendments to the Constitution, but for unprotected conduct — *i.e.*, unauthorized entry into a building at a time when it was closed to the public in general. As such, the conviction was proper. Cf. *Adderly* v. *Florida*,

385 U.S. 39; *Cox* v. *Louisiana*, 379 U.S. 559. *Amalgamated Food Employees Union 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 — upon which appellant chiefly relies — is not to the contrary. In that case, a lower court had enjoined all picketing — whether peaceful or not — in a "public" shopping center. Here no such blanket prohibition exists. Nothing in the statute under which appellant was convicted prevented him from pursuing his chosen activities at a time when the building was open to the public. It simply prevents access when it is normally closed to the public.[2] This reasonably and narrowly drawn statute, which, in the interest of public safety, proscribes a course of conduct — although such conduct might embrace elements of speech — was therefore properly applied to appellant in the circumstances. *Cox* v. *Louisiana*, 379 U.S. 559, 563.

## Conclusion

For the reasons stated, it is respectfully submitted that the appeal should be dismissed on the ground that it does not present a substantial federal question.

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[2] No claim was made below, nor is there any showing, that the building was closed to the general public for the sole purpose of preventing the conduct pursued by appellant.